

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

PAUL GREEN,
Charging Party/Appellant

-v-

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES DIVISION OF THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,
Respondent

Case # 0101014541

FINAL AGENCY DECISION

Charging Party, Paul Green, filed a complaint with the Department of Labor and Industry (Department), which alleged discrimination in employment on the basis of disability. Following an informal investigation, the Department determined that a preponderance of the evidence supported Green's allegations. The case went before the Hearings Bureau of the Department of Labor and Industry, which held a contested case hearing, pursuant to § 49-2-505, MCA. The hearings officer issued a Decision on December 6, 2011. The hearings officer determined that the Department's jurisdiction, under § 49-2-512(1), MCA, is preempted by the federal Railroad Labor Act because the resolution of the claim is "substantially dependent" on an analysis of the collective bargaining agreement between BMWFD and BNSF. Consequently, the hearing officer dismissed the case for lack of jurisdiction. Green filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on March 21, 2011. Oral argument was waived by the parties.

STANDARD OF REVIEW

The Commission may reject or modify the conclusions of law and interpretations of administrative rules in the hearing officer's decision but may not reject or modify the findings of fact unless the Commission first reviews the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. *Admin. Rules of*

Mont. 24.9.123(4). A factual finding is clearly erroneous if it is not supported by substantial evidence in the record, if the fact-finder misapprehended the effect of the evidence, or if a review of the record leaves the Commission with a definite and firm conviction that a mistake has been made. *Denke v. Shoemaker*, 2008 MT 418, ¶ 39, 347 Mont. 322, ¶ 39, 198 P.3rd 284, ¶ 39. The Commission reviews conclusions of law to determine whether the hearing officer's interpretation and application of the law is correct. *Denke*, ¶ 39.

DISCUSSION

After careful consideration of the complete record and the argument presented by the briefing of the parties, a majority of the Commission determines that the hearing officer's legal conclusion that the jurisdiction of the Department of Labor and Industry under § 49-2-512(1), MCA, is preempted pursuant to the Railroad Labor Act because the resolution of the claim is substantially dependent upon an analysis of the collective bargaining agreement between BMWED and BNSF. Therefore, the Commission affirms the hearing officer's Decision in its entirety.

ORDER

IT IS HEREBY ORDERED, that the appeal of Paul Green is denied and the complaint is dismissed for lack of subject matter jurisdiction. The Commission hereby adopts and incorporates the entire Hearing Officer Decision, dated December 6, 2011, within this Final Agency Decision.

Either party may petition the district court for judicial review of the Final Agency Decision. *Sections 2-4-702 and 49-2-505, MCA*. This review must be requested within 30 days of the date of this order.

DATED this 28TH day of March, 2012.

_____/Im minich/_____
L.M. Minich, Chair
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this 28th day of March, 2012.

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_____/tamnewby/_____
Tam Newby, Legal Secretary
Montana Human Rights Bureau